

## DEPARTMENT OF COMMERCE

## Patent and Trademark Office

## 37 CFR Part 41

[Docket No.: PTO-P-2008-0054]

**Clarification of the Effective Date Provision in the Final Rule for Ex Parte Appeals****AGENCY:** United States Patent and Trademark Office, Commerce.**ACTION:** Interpretation and effective date clarification.

**SUMMARY:** On June 10, 2008, the United States Patent and Trademark Office (Office) published the final rule that amends the rules governing practice before the Board of Patent Appeals and Interferences (BPAI) in *ex parte* patent appeals. The effective date provision in the final rule states that the effective date is December 10, 2008, and the final rule shall apply to all appeals in which an appeal brief is filed on or after the effective date. The final rule requires, in part, appeal briefs in a new format relative to the format required prior to the rule revision. The Office is issuing this notice to clarify that it will not hold an appeal brief as non-compliant solely for following the new format even though it is filed before the effective date.

**DATES:** This is effective November 20, 2008.

**FOR FURTHER INFORMATION CONTACT:** Kery A. Fries at (571) 272-7757 or Joni Y. Chang at (571) 272-7720, Senior Legal Advisors, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy directly by phone, or by facsimile to (571) 273-7757, or by mail addressed to: Mail Stop Comments-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

**SUPPLEMENTARY INFORMATION:** On June 10, 2008, the United States Patent and Trademark Office (Office) published the final rule that amends the rules governing practice before the Board of Patent Appeals and Interferences (BPAI) in *ex parte* patent appeals. See *Rules of Practice Before the Board of Patent Appeals and Interferences in Ex Parte Appeals*; Final Rule, 73 FR 32938 (June 10, 2008), 1332 *Off. Gaz. Pat. Office* 47 (July 1, 2008) (hereinafter "BPAI final rule 2008"). The BPAI final rule 2008 states that the effective date is December 10, 2008, and the final rule shall apply to all appeals in which an appeal brief is filed on or after the effective date. The BPAI final rule requires, in part, appeal briefs in a new format relative to the

format required prior to the rule revision. The Office has received appeal briefs in the new format under the final rule before the effective date. The Office will not hold an appeal brief as non-compliant solely for following the new format even though it is filed before the effective date.

Accordingly, appeal briefs filed before December 10, 2008, must either comply with current 37 CFR 41.37 (in effect before December 10, 2008) or revised 37 CFR 41.37 (in effect on or after December 10, 2008). Appeal briefs filed on or after December 10, 2008, must comply with the revised 37 CFR 41.37. A certificate of mailing or transmission in compliance with 37 CFR 1.8 will be applicable to determine whether the appeal brief was filed prior to the effective date in order to determine which rule applies. For any appeal brief filed in the new format under revised 37 CFR 41.37, the Office will provide an examiner's answer in the new format under revised 37 CFR 41.39 if the appeal is maintained.

Similarly, a notice of appeal filed before December 10, 2008, in compliance with revised 37 CFR 41.31 (in effect on or after December 10, 2008) will be accepted by the Office. Thus a notice of appeal filed before December 10, 2008, must either comply with current 37 CFR 41.31 (in effect before December 10, 2008) or revised 37 CFR 41.31 (in effect on or after December 10, 2008), regardless of the date of filing of the appeal brief. However, a notice of appeal filed on or after December 10, 2008, must comply with the revised 37 CFR 41.31 (e.g., the notice of appeal must be signed in accordance with 37 CFR 1.33(b)).

The Office has held a few appeal briefs filed in the new format prior to the publication of this clarification notice non-compliant. Any appellant who has received a notice of non-compliant appeal brief may request that the notice of non-compliant appeal brief be withdrawn if the sole reason for non-compliance is that the appeal brief was presented in the new format.

Dated: November 10, 2008.

**Jon W. Dudas,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. E8-27357 Filed 11-19-08; 8:45 am]

**BILLING CODE 3510-16-P**

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

[FCC 08-205; MB Docket No. 04-219; RM-10986]

**Radio Broadcasting Services; Evergreen, AL and Shalimar, FL****AGENCY:** Federal Communications Commission.**ACTION:** Final rule; denial.

**SUMMARY:** This document denies an Application for Review filed by Qantum of Fort Walton Beach License Company, LLC directed to the *Memorandum Opinion and Order* in this proceeding. With this action, the proceeding is terminated.

**DATES:** Effective November 20, 2008.

**FOR FURTHER INFORMATION CONTACT:** Robert Hayne, Media Bureau, (202) 418-2177.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the *Memorandum Opinion and Order* in MB Docket No. 04-219, adopted September 5, 2008, and released October 31, 2008. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160 or <http://www.BCPIWEB.com>. The Commission will not send a copy of this *Memorandum Opinion and Order* pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules of particular applicability. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

[FR Doc. E8-27665 Filed 11-19-08; 8:45 am]

**BILLING CODE 6712-01-P**